

SERVED: October 17, 2007

NTSB Order No. EA-5326

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 9th day of October, 2007

)	
ROBERT A. STURGELL,)	
Acting Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Dockets:
v.)	
)	
ROBERTO SANCHEZ,)	SE-17721
BYRON J. ELLISON,)	SE-17723
JOSE M. SANTOS,)	SE-17724
MAXIMO S. RAYMONDI,)	SE-17727
CRAIG A. YOUNG,)	SE-17734
DAVID E. MELLICHAMP, and)	SE-17710
BRUCE W. TIBBETTS, ¹)	and SE-17855
)	
Respondents.)	
)	

¹ Originally, eight cases were consolidated and included Respondent Wilmer Armando Loza, SE-17722. While the law judge's order granting summary judgment pertained to all eight respondents, the law judge later issued an order on March 23, 2007, vacating the order granting summary judgment and terminating the proceeding as to Respondent Loza, SE-17722.

OPINION AND ORDER

Respondents appeal the order of Administrative Law Judge William A. Pope, II, issued on March 1, 2007.² By that order, the law judge granted the Administrator's motion for summary judgment on his emergency orders of suspension of respondents' mechanic certificates with airframe and powerplant (A&P) ratings, as applicable, until such time as they successfully complete a required reexamination.³ As discussed below, we deny the appeal.

The facts common to all seven respondents are as follows:
Respondents were tested at St. George Aviation (SGA) and issued

² A copy of the law judge's decisional order is attached.

Both the Administrator and respondents have, to varying degrees and on their own initiative, undertaken in the briefs to informally group all the respondents involved in three virtually identical cases. These cases, however, were never formally consolidated and, thus, the Board cannot *ad hoc* group them together. Instead, we will issue three separate decisions, keeping the cases captioned as they were before the law judge, below.

³ Title 49 U.S.C. § 44709(a) grants the Administrator authority to reexamine, "at any time," those who hold airman certificates.

Respondents waived the expedited procedures normally applicable to emergency revocation proceedings under the Board's rules.

The complaints are thoroughly summarized in the law judge's order, attached, and thus a repeat is unnecessary.

Respondent Sanchez holds an airframe rating. Respondents Ellison, Santos, Raymondi, Young, Mellichamp, and Tibbetts hold both A&P ratings.

mechanic certificates by FAA Designated Mechanic Examiner (DME) Anthony St. George during the period from October 10, 1995, to December 31, 1998. The Department of Transportation, Office of Inspector General, conducted an investigation of SGA in 1998, and a subsequent criminal trial established that numerous fraudulent mechanic certificates were issued through SGA and Anthony St. George. The allegations of fraud related to the testing practices dating back to 1995, of SGA and Anthony St. George, such as signing off on incomplete oral and practical examinations and providing answers for written examinations. DME St. George and another SGA employee were convicted in 1999 of making fraudulent statements and conspiracy to commit fraud.⁴

The FAA then conducted its own investigation and determined that SGA had engaged in a pattern and practice of giving incomplete and insufficient examinations. The records indicated that there were not enough hours in the day for DME St. George to have performed the testing functions as the records indicated.⁵

⁴ Administrator's (Adm.) Exhibit (Exh.) 3; Exh. 14, Report of Investigation, DOT Office of Inspector General, 11/30/00.

⁵ Adm. Exhs. 10 and 14. Also, according to the declaration of Robert Cunningham, the principal maintenance inspector involved in these cases, he interviewed approximately 100 SGA applicants and found without exception that their descriptions of the examinations conducted raised suspicions as to the validity of those examinations.

The law judge thoroughly reviewed the record and determined that a reasonable basis existed for: 1) questioning the adequacy of the SGA testing; 2) questioning the qualifications of respondents; and 3) requiring that respondents submit to a reexamination. Further, he determined that respondents raised no issues of material fact regarding whether they were properly tested and concluded that summary judgment is appropriate in this case.

On appeal, respondents fail to identify any error in the law judge's decision, including his determination that the evidence established a reasonable basis for the Administrator to require the respondents to submit to reexamination.

It is well-settled that the Board's inquiry into the reasonableness of a reexamination request is a narrow one, namely, that a "basis for questioning competence has been implicated, not that a lack of competence has been demonstrated." See Administrator v. Santos and Rodriguez, NTSB Order No. EA-4266 at 4 (1994). See also Administrator v. Hutchins, NTSB Order No. EA-4899 (2001) ("the Administrator need only show that a reasonable basis for the reexamination request exists").

The facts in Santos and Rodriguez were similar to those in the instant case, in that the respondents did not act to call their competence into question. Rather, a serious concern was

raised that, "they should not have been certificated at all because they may have not been required in initial testing to demonstrate their qualifications in a manner sufficient to merit certification." Santos and Rodriguez, supra at 4. Of significance, the Board emphasized that, "reexamination requests made in this context must be sustained if the evidence creates even a reasonable doubt as to whether the respondents were tested properly." Id. The Board further stated:

[I]n the face of circumstances strongly suggesting that many individuals may have obtained certificates without demonstrating the knowledge and skill necessary either to obtain or hold them, [the Administrator] was fully justified in seeking, if not obligated in the public interest to seek, re-examination of any or all of the licensees he fairly suspected had not been required to establish their qualification. His suspicions ... were ... validated by the evidence of deficient testing the [] inspectors uncovered in their investigation of the examiner.

Id.

Clearly, the Administrator had a reasonable basis to request the reexaminations at issue in this proceeding. The DME, to whom the Administrator had delegated the authority to verify that applicants for FAA maintenance certification possess the skills and knowledge necessary to safely exercise the privileges of an A&P certificate, was convicted of fraud in connection with those duties. Respondents graduated from the same training facility and were examined by the DME during or

near to the period in which he was known to have been acting fraudulently, and, therefore, it is reasonable, indeed, necessary, for the Administrator to take steps to verify that respondents have previously demonstrated, and do now possess, the required competence to hold their certificates. In short, the pleadings and other supporting documentation offered by the Administrator provide overwhelming evidence to support the reasonableness of the Administrator's reexamination request.

Summary judgment is appropriate where, as here, there are no genuine issues of material fact. Respondents have identified no valid reason to disturb the law judge's decision.⁶

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondents' appeal is denied; and

⁶ Respondents argue on appeal in general terms, not specifics, regarding the law judge's decision to grant the Administrator's motion for summary judgment. Respondents argue that the Administrator did not allege they were involved in any wrongdoing; the FAA was as much to blame as SGA for issuing mechanic certificates inappropriately; they are innocent victims of DME St. George's criminal behavior; they were not interviewed to determine whether they received abbreviated tests; there are no accidents or incidents involving respondents; the reexamination requests must be dismissed under the stale complaint rule.

The law judge thoroughly addressed all these arguments in his decision and respondents have identified no error. We find none of the arguments to be persuasive, and note that the stale complaint rule is not applicable, as an issue of lack of qualification has been raised.

2. The law judge's decision, affirming the emergency orders of suspension of respondents' mechanic certificates with airframe and powerplant ratings, as applicable, is affirmed.

ROSENKER, Chairman, SUMWALT, Vice Chairman, and HERSMAN, HIGGINS, and CHEALANDER, Members of the Board, concurred in the above opinion and order.